

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYName CATO, JAMES
(Last) (First)Prisoner Number H35663Institutional Address CC1-STATE PRISON, P.O. Box 1902
TEHACHAPI, CA. 93581**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**JAMES CATO, JR.
(Enter the full name of plaintiff in this action.)

vs.

W. J. SULLIVAN, WARDEN.

(Enter the full name of respondent(s) or jailor in this action)

Case No. 08 0052
(To be provided by the clerk of court)**PETITION FOR A WRIT
OF HABEAS CORPUS
DEMAND FOR
EVIDENTIARY HEARING.****JF****(PR)****Read Comments Carefully Before Filling In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 CONTRA COSTA COUNTY SUPERIOR COURT MARTINEZ, CA.

15 Court Location

16 (b) Case number, if known 961891-9

17 (c) Date and terms of sentence 2/14/97. 21 YEARS, 4 MONTHS

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes ☒ No ☐

20 Where?

21 Name of Institution: CCI - STATE PRISON

22 Address: P.O. BOX 1902, TEHACHAPI, CA. 93581

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 CARJACKING WITH USE OF FIREARM ; POSSESSION OF FIREARM BY FELON -

27 PENAL CODE 215 ; 12022.5(a)(2) ; 12021(A)(1)

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐
 Preliminary Hearing: Yes ☒ No ☐
 Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐
 (b) Preliminary hearing Yes ☒ No ☐
 (c) Time of plea Yes ☒ No ☐
 (d) Trial Yes ☒ No ☐
 (e) Sentencing Yes ☒ No ☐
 (f) Appeal Yes ☒ No ☐
 (g) Other post-conviction proceeding Yes ☐ No ☒

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 1998 Result: AFFIRM

Supreme Court of California Yes ☒ No ☐

Year: 1998 Result: DENIED

Any other court Yes ☐ No ☐

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes _____

No ☒

(c) Was there an opinion?

Yes _____

No ☒

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____

No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: CONTRA COSTA COUNTY SUPERIOR COURT

Type of Proceeding: HABEAS PETITION

Grounds raised (Be brief but specific):

a. SENTENCING ERROR

b. _____

c. _____

d. _____

Result: DENIED Date of Result: 6-21-05

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

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a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

III. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

IV. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes ☒ No ☐

Name and location of court: 9TH CIRCUIT COURT OF APPEALS

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: INEFFECTIVE ASSISTANCE OF COUNSEL -

6 MISCARRIAGE OF JUSTICE

7 Supporting Facts: COUNSEL HAD IN HER POSSESSION DOCUMENTED
8 REPORTS THAT FORENSIC EVIDENCE FOUND AT ALLEGE CRIME
9 SCENE DID NOT MATCH PETITIONER BUT FAILED TO PRESENT
10 AT TRIAL.

11 Claim Two: NEWLY DISCOVERED FORENSIC EVIDENCE
12 (FINGERPRINTS) ESTABLISHES PETITIONERS INNOCENCE

13 Supporting Facts: FINGERPRINTS FOUND AT ALLEGE CRIME SCENE
14 DID NOT MATCH PETITIONER AND NO PHYSICAL EVIDENCE
15 LINKS PETITIONER TO CRIME. (SEE EXHIBIT - A. POLICE
16 REPORT)

17 Claim Three: _____

18 _____

19 Supporting Facts: _____

20 _____

21 _____

22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 CLAIM ONE AND TWO RELIES ON NEWLY DISCOVERED
26 EVIDENCE PROVIDED BY RICHMOND ~~POLICE~~ POLICE
27 DEPARTMENT. PREVIOUSLY UNKNOWN

28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:
4
5
6

7 Do you have an attorney for this petition?

Yes ☐

No ☒

8 If you do, give the name and address of your attorney:
9

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

12/21/07

14 Date

James Cato, Jr.

15 Signature of Petitioner
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(Rev. 6/02)

EXHIBIT

A

96-14879

RECORDS

70. CODE SECTION 215 PC	71. CRIME CARJACKING	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) WALKER, ALANNA		74. ADDRESS 4749 FAIRFAX AV OAKLAND, CA	BUSINESS 75. PHONE 529-0602	

EVIDENCE SUPPLEMENT**I. OBSERVATIONS:**

On 7-19-96 at approx. 1345 Hrs., I was dispatched to the 4700 Blk of Cypress Av per Ofc. M. Gagan, to process the carjacked Vic Vehicle.

Upon arrival, I saw the 1987 Acur Legend, Tan, CA #2GLP407, parked w/b along the n/c/l of Cypress Av. The l/front tire was deflated, all doors were closed and locked, and the l/door window was open approx. 1", all other windows were closed. I saw no obvious signs of forced entry into the veh and there was no damage to the steering column or ignition. I was able to gain entry into the veh through the driver's l/door.

I process the interior and exterior surfaces for latents and took photos.

II. PHOTOS: PENTAX #33, LOG #2940

1. ID view, Vic Veh, #2GLP407.
2. View, l/side.
3. View, r/side.

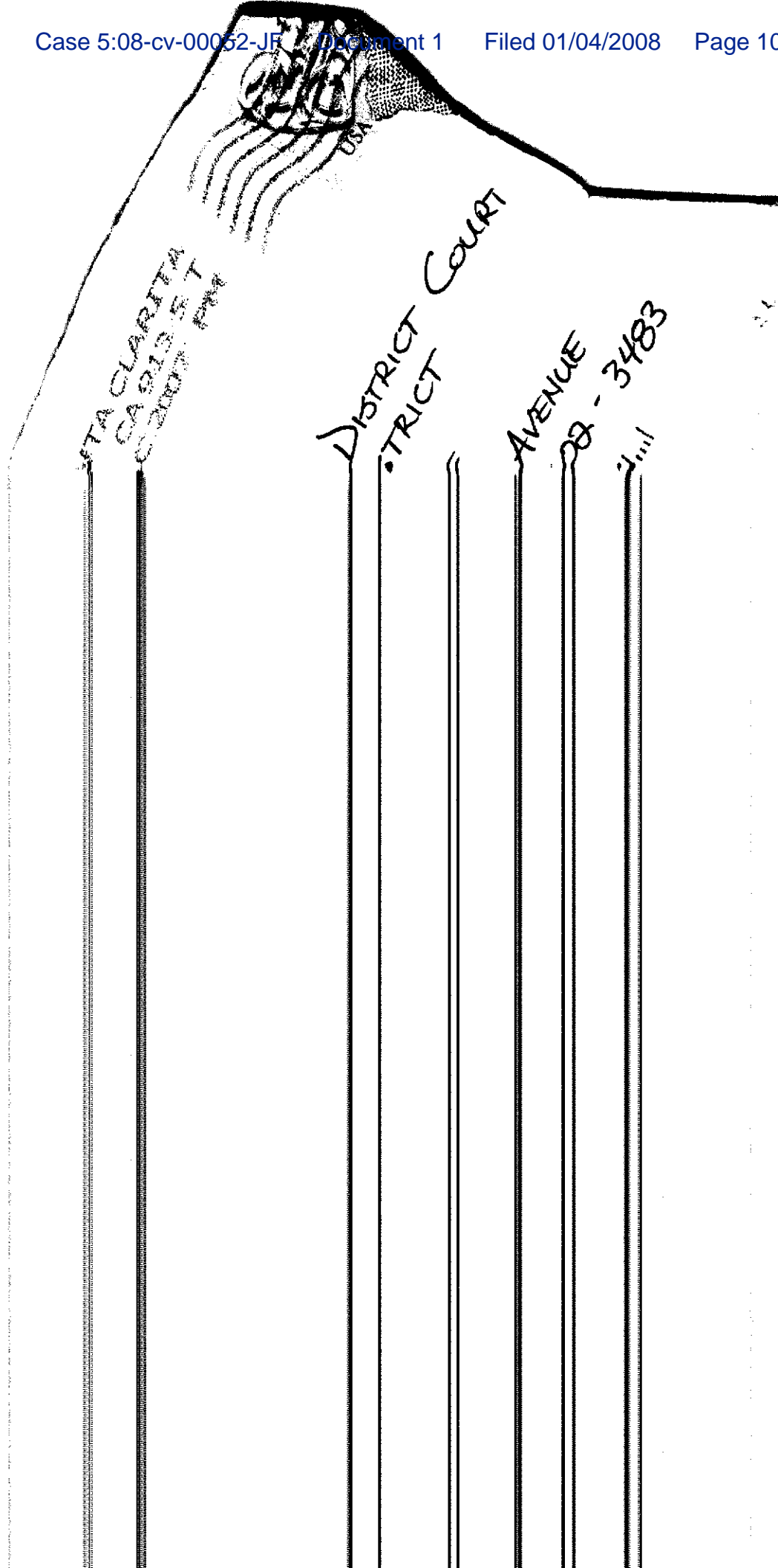
III. LATENTS:

One lift from exterior l/door window. ←

IV. PHYSICAL EVIDENCE: NONE ←**V. FINAL ACTIONS:**

1. Photos booked into RPD Evidence Room.
2. Latent to Locker #61.

REPORTING OFFICERS Ofc. M. Wang, #1249		RECORDING OFFICER		TYPED BY mjs	DATE AND TIME 7-22-96	ROUTED BY																								
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> SQ./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER	ROUTING																											
		<table border="1"> <tr> <td>ROBBERY</td> <td>COM REL</td> <td>PROPERTY</td> <td>STAT</td> <td>R. FILE</td> </tr> <tr> <td>A.T.</td> <td>HOMICIDE</td> <td>VICE</td> <td>STATE</td> <td>TOTAL</td> </tr> <tr> <td>ADM.</td> <td>JUV.</td> <td>CA</td> <td>DA</td> <td>ASSIGNED</td> </tr> <tr> <td>SS CAPT.</td> <td>FRAUD</td> <td>TRAFFIC</td> <td>IA</td> <td></td> </tr> <tr> <td>UNI. CAPT.</td> <td>CR. CAPT.</td> <td></td> <td></td> <td></td> </tr> </table>				ROBBERY	COM REL	PROPERTY	STAT	R. FILE	A.T.	HOMICIDE	VICE	STATE	TOTAL	ADM.	JUV.	CA	DA	ASSIGNED	SS CAPT.	FRAUD	TRAFFIC	IA		UNI. CAPT.	CR. CAPT.			
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		<p>SGT. L. BAIJA</p>																												



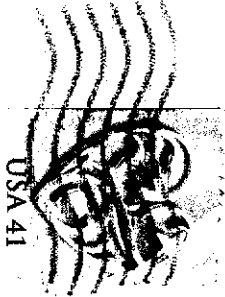
JAMES CATO #H35663
LEWIS CORRECTIONAL INSTITUTION
Box 1908 (4A-7B-105 Low)
LEWISVILLE, CA. 93581

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DEC 28 2007

Post

SANTA CLARITA
CA 91357
21 DEC 2007 PM



SENT FROM
STATE PRISON

94102+3661-39 C004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

U.S. COURTHOUSE
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA. 94102 - 3483

